

RULEMAKING NOTICE FORM

Notice Number 2017-56

Rule Number He-C 6912

1. Agency Name & Address:

**Dept. of Health & Human Services
Division of Children, Youth & Families
Child Development Bureau
129 Pleasant Street
Concord, NH 03301**

2. RSA Authority: RSA 170-G:4, XVIII,
RSA 170-G:5

3. Federal Authority: _____

4. Type of Action:

Adoption X

Amendment _____

Repeal _____

Readoption _____

Readoption w/amendment _____

5. Short Title: **Preventive and Protective Child Care Eligibility**

6. (a) Summary of what the rule says and of any proposed amendments:

The Department of Health and Human Services (Department) is proposing to adopt He-C 6912 “Preventive and Protective Child Care Scholarship Eligibility,” a new rule intended to list the eligibility requirements for families seeking preventive or protective child care scholarship. Eligibility requirements were included in He-C 6349, “Certification for Payment Standards for Licensed and License-Exempt Child Care Providers” which expired on 3/17/17.

The proposed rule includes all eligibility criteria, verification requirements, authorization periods, and the standard rate for families seeking preventive or protective child care scholarship. Billing and payment requirements for protective or preventive child care scholarship will be included in the costs associated with of He-C 6918 which is being proposed in a separate, concurrent rulemaking proceeding. Provider enrollment requirements will be included in He-C 6914. The proposed He-C 6914 is being proposed in a separate, concurrent rulemaking proceeding.

The proposed He-C 6912 includes definitions from He-C 6349, many of which were amended for consistency with other child care scholarship rules, including: “authorized representative”, “authorized service level,” caretaker relative”, “case plan,” “child care,” “founded,” “licensed,” “license-exempt,” “recipient,” and “service plan.” Definitions for “enrolled child care provider,” “comprehensive family support agency,” “preventive child care,” and “protective child care” have been added to the rule in order to clarify the requirements for eligibility for preventive and protective child care scholarship.

He-C 6912.05 (a) includes a period of up to 4 months for a specific crisis or episode of need for which preventive child care shall be authorized.

The proposed He-C 6912.05(c) requires the parent to verify employment prior to being authorized for protective child care.

He-C 6912.07 explains the standard rate methodology consistent with He-C 6910 “Child Care Eligibility” which relates to the rates for families receiving preventive or protective child care scholarship.

The proposed He-C 6912 also incorporates by reference forms described in the rule.

6. (b) Brief description of the groups affected:

The proposed rule affects those seeking to be found eligible for preventive or protective child care scholarship.

6. (c) Specific section or sections of state statute or federal statute or regulation which the rule is intended to implement:

<u>Rule</u>	<u>Statute to Be Implemented</u>
He-C 6912.01	RSA 161:2, RSA 167:83, I(b); & RSA 170-G:4, II, III
He-C 6912.02	RSA 161:2, RSA 167:83, I(b); & RSA 170-G:4, II, III
He-C 6912.03	RSA 161:2, RSA 167:83, I(b); & RSA 170-G:4, II, III
He-C 6912.04	RSA 161:2, RSA 167:83, I(b); & RSA 170-G:4, II, III
He-C 6912.05	RSA 161:2, RSA 167:83, I(c); & RSA 170-G:4, III, VI
He-C 6912.06	RSA 161:2, XII; RSA 170-G:4, II, III
He-C 6912.07	RSA 161:2, XII; RSA 170-G:4, XVII

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Catherine Bernhard	Title:	Rules Coordinator
Address:	Dept. of Health and Human Services Administrative Rules Unit 129 Pleasant St. Concord, NH 03301	Phone #:	271-9374
		Fax#:	271-5590
		E-mail:	catherine.bernhard@dhhs.nh.gov

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

The proposed rules may be viewed and downloaded at:

<http://www.dhhs.nh.gov/oos/aru/comment.htm>

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **Thursday June 1, 2017**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Thursday, May 25, 2017 at 1:00 at p.m.**

Place: [**DHHS Brown Bldg., Auditorium, 129 Pleasant St., Concord, NH**](#)

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant)

FIS # **17:046** , dated **05/2/17**

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

Not applicable; these are new rules.

2. Cite the Federal mandate. Identify the impact on state funds:

None.

3. Cost and benefits of the proposed rule(s):

The proposed rule is a new rule and replaces the eligibility for preventive and protective child care scholarship which was included in He-C 6349 which expired on 3/17/17 and also includes a standard rate methodology consistent with He-C 6910.

A. To State general or State special funds:

All costs are attributable to RSA 161:2, XII, which requires the provision of protective and preventive child care scholarships. The governor's recommended budget for FY 2018/19 includes \$1,038,123 each year for providers of these scholarships, as well as \$382,202 in FY 18 and \$391,713 in FY 19 for associated administrative costs.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

The proposed rule may result in potential benefits to child care providers enrolled with the Division for Children, Youth, and Families, as follows:

None.

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution

The proposed rule modifies an existing program or responsibility but does not mandate any fees, duties or expenditures on the political subdivisions of the state, and therefore does not violate Part I, Article 28-a of the N.H. Constitution.

Adopt He-C 6912 to read as follows:

PART He-C 6912 PREVENTIVE AND PROTECTIVE CHILD CARE ELIGIBILITY

Statutory Authority: RSA 161:2, XII; RSA167:83, I(b); and RSA 167:83, II(o)?

He-C 6912.01 Purpose. The purpose of this part is for the department of health and human services (DHHS), through the division for children, youth, and families (DCYF) to:

(a) Establish the eligibility criteria for preventive or protective child care scholarship which support healthy child development and the service or case plan. These types of child care scholarships, enable families to prepare for, secure, or maintain employment, participate in other approved activities, or maintain stability of the child while in an out of the home placement; and

(b) Establish the payment amounts for preventive and protective child care scholarship.

He-C 6912.02 Scope.

(a) This part shall apply to:

(1) Families authorized to receive preventive child care scholarship as determined by the comprehensive family support agency; or

(2) Children authorized by DCYF to receive protective child care scholarship pursuant to a court order or non-court ordered agreement between DCYF and the family.

(b) The child care payments established pursuant to He-C 6912 shall be contingent upon the availability and continued appropriation of sufficient funds for this purpose, and in no event shall DHHS be liable for any payments hereunder in excess of such available appropriated funds.

He-C 6912.03 Definitions.

(a) "Agency" means the board or directors, executive director, and employees of an organization that is incorporated and recognized by the NH secretary of state.

(b) "Authorization period" means the time for which a child is approved to receive preventive or protective child care.

(c) "Authorized representative" means the person(s) who is designated or authorized by a child care provider to act on behalf of that provider in matters related to billing DHHS for child care services provided, and is not the parent of a child in the provider's care who is receiving child care scholarship.

(d) "Authorized service level" means full time, half time or part time service level based on the number of hours per week that child care is approved based on the work schedule of the parent, the case plan developed by DCYF, or the service plan developed by the comprehensive family support agency.

(e) "Caretaker relative" means a relative who is not the biological parent of the child(ren), but is providing care and supervision of the child(ren) in the assistance group.

(f) "Case plan" means the division for children, youth and families (DCYF) written plan for the child and the family which outlines how services will be provided, and requirements to be met by a parent receiving a protective child care scholarship, pursuant to RSA 170-G: 4, III and 42 U.S.C. 671, Part E- Federal Payments for Foster Care and Adoption Assistance 42 USC 671(a) (16) and 42 USC 675(5) (a)-(D) state plan for foster care and adoption assistance.

(g) "Child care" means the act of providing supervision, food, activity, and rest to a child for a portion of the 24 hour day which promotes healthy child development and assist a child's parent(s) in preparing for, securing, or maintaining employment, or employment-related education or training, or for an approved activity that supports service or case plan goals.

(h) "Child care scholarship" means payment to a child care provider for child care services on behalf of a family who meets the eligibility criteria of He-C 6912.

(i) "Child experiencing significant special need(s)" means a child through the age of 17 who has a verified medical, physical, developmental, educational, or emotional disability requiring additional funds for accommodation or classroom adaptation in the child care setting.

(j) "Child protective service worker" (CPSW) means the DCYF representative who has expertise in managing cases resulting from concerns of child abuse or neglect to ensure families and children achieve safety, permanency and well being.

(k) "Comprehensive family support agency" means one of the DCYF contracted agencies throughout New Hampshire that provide a range of support services to families and children that focus on strengthening, supporting and building on the strengths and skills of individuals.

(l) "Department (DHHS)" means the department of health and human services of the state of New Hampshire.

(m) "Division for children, youth and families (DCYF)" means the organizational unit of the department of health and human services that provides services to children, youth and families referred by courts pursuant to RSA 169-B, RSA 169-C, RSA 169-D, RSA 170-B, RSA 170-C and RSA 463.

(n) "Enrolled child care provider" means that a child care provider has met the requirements found in He-C 6914 and is authorized to receive payment for services from DHHS.

(o) "Family" means a child (ren) and an adult(s) who reside in the same household and who have a birth, foster, step, adoptive, legal guardianship, or caretaker relative relationship.

(p) "Foster Parent" means an individual who has a license or permit for foster family care, pursuant to He-C 6446.

(q) "Founded" means a report of abuse or neglect where the department has determined that there is a preponderance of the evidence to believe that a child has been abused or neglected.

(r) "Full-time" means greater than 30 hours of child care per week.

(s) "Half-time" means greater than 15 and equal to or less than 30 hours of child care per week.

(t) "Legal guardian" means an individual, who is given legal authority by a court and charged with the duty to provide care, custody, and supervision of the child(ren).

(u) “Licensed” means a child care provider who has been issued a child care license to operate by the commissioner of DHHS, in accordance with RSA 170-E or has been issued a child care license to legally operate as a child care provider in accordance with the child care licensing requirements of a state neighboring New Hampshire.

(v) “License-exempt” means a child care provider who is not required to be licensed, in accordance with RSA 170-E:3, I (a), (b), (c), (f), (g), and (h), or is not required to be licensed but can legally operate as a child care provider in accordance with the regulations of a state neighboring New Hampshire.

(w) “Parent” means an individual who has a birth, adoptive, or step-parent relationship to the child(ren), a foster parent as defined in (q) above, a legal guardian as defined in (u) above, or a caretaker relative as referenced in (e) above.

(x) “Part time” means 1 to 15 hours of child care per week.

(y) "Preventive child care" means child care authorized by the comprehensive family support agencies to prevent child abuse or neglect and to give the parent an opportunity to participate in programs designed to teach positive parenting skills and address concerns that could lead to child abuse or neglect.

(z) "Protective child care" means child care for parents with a founded case in order to assist the parent in securing or maintaining employment, or to relieve parents of continuous child care and provide an opportunity to attend a program to correct the concerns that lead to abuse or neglect while there is an open assessment or case through DCYF.

(aa) “Provider” means an individual or a public or private organization supplying child care services to the family and requesting enrollment for financial reimbursement from DHHS.

(ab) “Recipient” means a member of a family, who meets eligibility requirements or authorization pursuant to He-C 6910 or He-C 6912 and is receiving a child care scholarship from DHHS. The term includes the term “parent” pursuant to (w) above.

(ac) Service plan” means a family service record maintained by a comprehensive family support agency that includes but is not limited to a specific crisis or episode of need for a child receiving preventive child care scholarship.

(ad) “Specific crisis or episode of need” means a time-limited event that creates a need for child care while a family participates in the goals and objectives required by a service plan created with a comprehensive family support agency. Each event must be separated by a period of success in meeting service plan goals and objectives.

(ae) “Standard rate” means a DHHS determined rate used to calculate a child care scholarship.

He-C 6912.04 Eligibility for Preventive and Protective Child Care Scholarship.

(a) Families shall be eligible to receive preventive child care scholarship when:

(1) The family does not have an open case with DCYF;

(2) A service plan to prevent child abuse or neglect, created by the comprehensive family support agency in conjunction with the parents, is in effect;

(3) The parent is participating in the goals and objectives required by the service plan created with the comprehensive family support agency; and

(4) The comprehensive family support agency has completed and submitted to the department a completed Form 1902 "Referral for Preventive Child Care Service" (October 2016).

(b) Eligibility for preventive child care scholarship, shall not be determined solely for receipt of financial assistance.

(c) If the comprehensive family support agency determines that authorized child care is no longer needed or appropriate, the agency shall contact provider relations to request that the authorization for child care be terminated.

(d) Families shall be eligible to receive protective child care scholarship when there is an open assessment or case through DCYF, and one of the following circumstances exists:

(1) The child is a current recipient of foster care who requires court-ordered child care while foster parents are employed;

(2) DCYF has authorized child care as being in the best interest of the child as determined in the case plan; or

(3) The child(ren) remains in the parent's home and the family has a founded report of abuse or neglect pursuant to RSA 169-C:3;

(e) Protective child care scholarship payments shall be made through an adoption assistance agreement in effect at the time these rules are adopted.

(f) Child(ren) eligible to receive preventive or protective child care scholarship shall be less than 13 years of age unless the child(ren) meets the exception criteria below:

a. The child has cognitive or behavioral concerns, such that the child and the community would be at risk; and the child care scholarship is approved by the comprehensive family support agency or DCYF field administrator; or

b. The child is experiencing significant special needs whose condition limits the child's ability to care for himself or herself, or he or she would cause harm to himself or herself or others without supervision as verified with a completed Form 2690 "Verification for a Child Experiencing Significant Special Needs." (July 2015),

(g) No child under the age of 72 months, i.e. 6 years shall be cared for in a license-exempt child care center program pursuant to RSA 170-E:2 XI-a.

(h) The child care level of service shall be based on the number of hours per week child care is needed as determined by the number of hours per week the parent is in an approved activity;

(i) The authorized service level shall be based (a)(2) and (d) above and applied as follows:

- a. For full time authorized service level, the number of hours shall be greater than 30 hours per week;
- b. For half time authorized service level, the number of hours shall be greater than 15 and equal to or less than 30 hours per week; and
- c. For part time authorized service level, the number of hours shall be between 1 and 15 hours per week.

He-C 6912.05 Verification Requirements.

(a) Comprehensive family support agencies shall verify each specific crisis or episode of need for which preventive child care is authorized for a period of up to 4 months and by documenting such in the service plan.

(b) Comprehensive support agencies shall verify the utilization of preventive child care scholarship through one of the following methods:

- (1) Weekly home visit with the family;
- (2) Monthly telephone calls or visits to the child care center; or
- (3) Meetings at the child care provider location to discuss the needs of the child while in the child care setting.

(c) Prior to authorizing protective child care, DCYF shall verify in the case plan:

- (1) The child's income;
- (2) That the parent is working; and
- (3) Child care is needed for the best interest of the child.

(d) The following verification requirements shall apply for a child experiencing significant special need(s):

- (1) The parent or guardian shall authorize the release of information to DHHS by completing section III of Form 2690 "Verification for a Child Experiencing Significant Special Needs" (July 2015); and by signing and dating the form, affirming the following:

"By signing below, I authorize this verification to be released to the Department of Health and Human Services. I understand that the information will be held in the strictest confidence and that it will be reviewed by, or shared with, authorized Department of Health and Human Services' staff involved in the authorization of Child Care and Development Fund Scholarships."

- (2) The child care provider shall complete section I of Form 2690, "Verification for a Child Experiencing Significant Special Needs" (July 2015); and, sign and date the form, certifying the following:

“I certify that the child’s special need(s) is significant enough that the child requires additional funds for accommodation or classroom adaptation in the child care setting.” and

(3) A licensed professional shall complete section II of Form 2690, “Verification for a Child Experiencing Significant Special Needs” (July 2015), and sign and date the form, certifying one of the following, as applicable:

- a. “I certify that: I am the child’s attending physician, physician’s assistant, advance practice registered nurse, or licensed mental health professional and am providing ongoing treatment; the child’s special need(s) is significant enough that the child requires additional support in a child care setting; and, if the child is 13 through 17 years of age, the child’s condition limits the child’s ability to care for himself/herself or he/she would cause harm to himself/herself or others without supervision.”; or
- b. “I certify that I am a SAU Special Education Director or Area Agency Director and I believe that the child’s special need(s) is significant enough that the child requires additional support in a child care setting.”

He-C 6912.06 Authorization Period.

(a) For preventive child care scholarship the comprehensive family support agency shall authorize no more than 4 months of preventive child care services per specific crisis or episode of need using Form 1902 “Referral for Preventive Child Care Service “ (October 2016).

(b) For protective child care scholarship:

(1) The CPSW shall authorize 6 months of child care services at a time.

(2) If the protective child care case closes prior to the end of the 6 month authorization period, the parent(s) with a need for continued child care shall be referred to:

- a. The comprehensive family support agency to create a service plan that may include the authorization of preventive child care scholarship; or
- b. The district office to apply for employment related child care scholarship.

He-C 6912.07 Child Care Scholarship Payment for Preventive and Protective Care.

(a) Preventive child care scholarship payments shall be based on the child care scholarship standard rate methodology pursuant to He-C 6910.17(a)-(f), except that DHHS shall not subtract the family’s cost share for the DHHS weekly standard rate. The comprehensive family support agency shall not authorize payment of any additional child care fees or co-payments in addition to or that exceed the DHHS child care scholarship weekly standard rate.

(b) Protective child care scholarship payments shall be based on the DHHS weekly standard rate pursuant to He-C 6910.17(a) – (f) and the difference between the weekly standard rate and the child care provider’s actual charge, if requested.

(c) In addition to the standard rates, a supplemental payment of \$50.00 full time, \$30.00 half time, and \$15.00 part time per week shall be paid for a child experiencing significant special need(s) subject to the verification described in He-C 6912.05.

(d) The supplemental payment in (c) above shall be effective the Monday following the approval date on the form 2690, "Verification for a Child Experiencing Significant Special Need(s)" (July 2015).

(e) When a child's age in months reaches the beginning of a new age category, that is, one of the following 0-17, 18-35, 36-78, 79-155 months the payment rate shall be changed effective the Monday following the change in age category.

(f) The child care scholarship payments established pursuant to He-C 6912 are contingent upon the availability and continued appropriation of sufficient funds for this purpose, and in no event shall DHHS be liable for any payments hereunder in excess of such available appropriated funds.

APPENDIX

<u>Rule</u>	<u>Statute to Be Implemented</u>
He-C 6912.01	RSA 161:2, RSA 167:83, I(b); & RSA 170-G:4, II, III
He-C 6912.02	RSA 161:2, RSA 167:83, I(b); & RSA 170-G:4, II, III
He-C 6912.03	RSA 161:2, RSA 167:83, I(b); & RSA 170-G:4, II, III
He-C 6912.04	RSA 161:2, RSA 167:83, I(b); & RSA 170-G:4, II, III
He-C 6912.05	RSA 161:2, RSA 167:83, I(c); & RSA 170-G:4, III, VI
He-C 6912.06	RSA 161:2, XII; RSA 170-G:4, II, III
He-C 6912.07	RSA 161:2, XII; RSA 170-G:4, XVII